UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1995/146
15 February 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-first session
Agenda item 25

FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS

Letter dated 10 February 1995 from the Permanent Representative of the Republic of Latvia to the United Nations Office at Geneva addressed to the Chairman of the Commission on Human Rights

In accordance with Commission on Human Rights resolution 1994/95 of 9 March 1994 entitled "World Conference on Human Rights", I have the honour to transmit herewith the National Programme for the Protection and Promotion of Human Rights in Latvia.

I should be grateful if you would have the Programme circulated as an official document of the fifty-first session of the Commission on Human Rights under agenda item 25.

(Signed) Sandra Kaniete
Ambassador

GE.95-11037 (E)

NATIONAL PROGRAMME

FOR THE PROTECTION AND PROMOTION

OF HUMAN RIGHTS IN LATVIA

TABLE OF CONTENTS

I. INTRODUCTION

II. EDUCATION, TRAINING AND INFORMATION

III. ISSUES RELATING TO THE PROTECTION OF PARTICULARLY VULNERABLE GROUPS

1. Children

2. Religious organizations

3. Non-citizens

4. Prisoners

5. Refugees

6. People with physical, intellectual or psychological disabilities

IV. THE EXISTING NATIONAL FRAMEWORK

1. The Saeima (Parliament) and Government

2. Public administration

3. The courts

4. Professional requirements for civil servants and jurists

5. The Prosecutor's Office and the police

6. Non-governmental organizations

V. THE MEDIA

VI. THE INTERNATIONAL FRAMEWORK

VII. CONCLUSIONS: THE NEED FOR A HUMAN RIGHTS COUNCIL OF LATVIA

1. Terms of reference of the Human Rights Council of Latvia

2. Powers of the Human Rights Council of Latvia

3. Priority elements for a national programme of human rights education, information and training in Latvia

I. INTRODUCTION

The Government of Latvia recognizes its responsibility to guarantee that all individuals living in Latvia are equal before the law and have the right to equal protection against discrimination based on race, language, political affiliation, ethnic or social background.

Latvia participated in the United Nations World Conference on Human Rights in Vienna in June 1993. In the Vienna Declaration, countries were invited to create national programmes on the protection and promotion of human rights, so as to promote stability in each country as well as to prevent conflict on a global scale.

At the request of the Government, a high-level international mission, led by Australian Federal Human Rights Commissioner Mr. Brian Burdekin and representatives of the OSCE and the Council of Europe, visited Latvia in July 1994. The mission was organized by the United Nations Development Programme (UNDP) to prepare a detailed needs assessment for the preparation of Latvia's National Programme for Protection and Promotion of Human Rights. The basis for Latvia's National Programme was the Final Report prepared by the aforementioned international mission.

Clearly, Latvia has made progress since its re-emergence as an independent State in re-establishing the rule of law and respect for human rights. However, much of the existing institutional structure is still weak. Many inadequacies are related to the lack of resources; but others are the product of bureaucratic reluctance to reforms or ignorance of human rights. Frequently, these practices are in conflict with Latvia's international treaty obligations and its existing national legislation.

The most essential part of this programme is related to the establishment of an independent institution for the protection of human rights which would be accessible to the public and would have the following functions: first, to provide information about human rights and its definition to the general public; second, to provide objective information on the rights and obligations of the State and of each and every individual. Special attention must be given to those individuals in our society who are not capable of protecting their own rights, such as children, the physically and mentally disabled, etc.; third, through the process of conciliation, to review and, if possible, create solutions to individual complaints. While human rights are universal, Latvia needs a mechanism for the protection and promotion of human rights which takes into account its own specific needs.

II. EDUCATION, TRAINING AND INFORMATION

The fifth general principle of the "Education Reform in Latvia" states that: "All citizens of Latvia, regardless of their property, social status, race, nationality, political or religious affiliation, membership of different groups, work or residence, have equal rights to education. Those citizens of other countries or non-citizens legally residing in Latvia, who pay taxes to

the Republic of Latvia, have the same rights to education as citizens of Latvia. The rights of other persons to education fall within the provisions of international agreements".

The 1993 World Conference on Human Rights concluded that human rights education, training and information were "essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace". 1/ The World Conference also called on all States and institutions "to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings". 2/

To comply with the spirit of these decisions by the international community, Governments, with the assistance of the international organizations (and, where appropriate, bilateral donors), national institutions and NGOs should take whatever action they can to promote an increased awareness of human rights. They should not only initiate and support formal education programmes in human rights, but also ensure effective dissemination of information to the general public.

There is an urgent and fundamental need to educate the public in Latvia on the meaning of human rights and the essential role which the protection and promotion of human rights plays in a democratic society.

It is also essential to inform the public of the rights and obligations of the State according to Latvia's international treaty obligations. The term "human rights" has lost much of its meaning to the people of Latvia due to the cynical abuse of the phrase during 50 years of Soviet occupation. Therefore, conditions need to be created to ensure that the public opinion is informed about the meaning of the concept of "human rights" so that the full range of issues be included in public debate.

Latvia is just beginning its process of educational reform. The objective of Latvia's education reform 3/ is "to create a system of education, appropriate to a democratic society" and two of its guiding principles are that: "(1) Every person has a right to education. According to individual wishes, interests, needs and abilities, the educational system offers equal opportunities to receive education; and (2) Education is active. It is based on a concept of the essential values in a democratic society - freedom, creative attitude to any work, a critical view on any process in life and society, a sense of responsibility for the result of one's work".

The existing Law on Education was adopted in June 1991. However, Latvia has since embarked on a fundamental transition and there is now widespread agreement that the Government must develop a new Law on Education which would comply with internationally accepted norms. 4/ As outlined in "Education Reform in Latvia": "the basic principles of education are humanity, democracy, individualization, creative activity, national spirit, virtuousness, professionalism, scientific character, a systematic approach,

contemporaneity". In order to effectively integrate human rights principles within revised curricula, "respect for protection of human rights" should be specifically included in the definition of "basic principles" in the new Law on Education. While no human rights education programme exists in the formal educational establishment, specific curricula for courses on democracy have been developed, within which components on promotion of human rights could be incorporated. 5/

In addition to curriculum development, there is a need to train teachers at all levels in the promotion of human rights. 6/ Teacher-training is currently provided by both public and private establishments and there is considerable scope for the development of teacher-training modules in human rights promotion. 7/ Other needs within the field of education include creating counselling facilities and social education centres in different parts of Latvia for a variety of vulnerable groups, including pensioners, single mothers and people recently released from prison.

In order to address the problem of taking care of children in after-school hours, it is of importance to develop a situation where those children attending schools have a chance to participate in appropriate after-school activities. Cooperation between schools located near each other should be encouraged to help solve this problem. It is in the interests of the State to promote multifaceted educational opportunities for disabled children, while providing parents the opportunity to participate in the workforce.

Another important education issue is raising teachers' awareness of the rights of children with disabilities (including the mentally ill). Basic human rights principles, with which Latvia's policies and practices should comply, are set out in two recently concluded international instruments - the Convention on the Rights of the Child and the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities. 8/ Latvia clearly has limited resources. However, the Convention on the Rights of the Child acknowledges that the rights it enumerates should be implemented progressively by Governments - in accordance with the resources at their disposal.

In order to transform knowledge about human rights into operational skills, professional training courses as well as a comprehensive programme of judicial training and retraining are required. A general programme of legal training is an urgent priority - given the lack of legally trained officials in Latvia's public administration. In addition to judges, lawyers and prosecutors, human rights training needs to be provided to members of the Saeima, the media, trade union officials, employer associations and labour inspectors.

Special human rights education and training programmes need to be provided to those professional groups which have a critical impact on human rights practice - including the police and other structures of the Ministry of Interior, the heads of those structures, as well as the military and the leaders of the military.

Such training programmes can be effective and relatively inexpensive if they are structured to reflect the operational realities of the groups involved. For example, training programmes for the military could be designed and executed at four levels of intensity:

- The first level is the minimum level of understanding required for all personnel.

- The second level builds on this understanding and is designed for members of operational units likely to have direct contact with the public.

- The third level of courses would be for those personnel involved in planning and directing operations and administration at headquarters/command level.

- The fourth level of training would be for service legal officers, designed to equip them with the necessary expertise to provide advice to operational commanders.

There is a need to better inform the general public about their respective rights and responsibilities. 9/ The Ministry of State Reform has initiated the publication and dissemination of a series of brochures through postal services and other social service offices. Over 200,000 copies of such brochures have already been distributed on social welfare aid for the poor, expectant mothers, privatization vouchers and income tax. In the nearest future, brochures will be published on issues including the rights of citizens and non-citizens, the process of naturalization, the tax system and consular services. A number of NGOs have also started to disseminate material on human rights issues. 10/

However, it is the responsibility of the Government to speedily collect, translate and disseminate all international treaties and agreements to which Latvia has acceded along with other materials on human rights, including textbooks on national and international law, international human rights treaties and other instruments from the United Nations, Council of Europe and the Organization for Security and Cooperation in Europe (OSCE).

III. ISSUES RELATING TO THE PROTECTION OF PARTICULARLY VULNERABLE GROUPS

1. Children

Article 25 (2) of the Universal Declaration of Human Rights stipulates that children and mothers shall be entitled to special protection, and that all children (irrespective of their legal status) shall enjoy the same social protection. Article 24 of the International Covenant on Civil and Political Rights also recognizes the need for special protection to be afforded to children on a non-discriminatory basis. 11/

The 1989 Convention on the Rights of the Child, to which Latvia acceded in 1991, established a special legal framework for the protection and promotion of the rights of children. 12/ The underlying philosophy of the

Convention is the recognition by States that children are a particularly vulnerable group and their entitlement to protection encompasses both individual and collective rights.

The World Conference on Human Rights reaffirmed the international community's commitment to the protection of the rights of children. States called for measures to strengthen mechanisms and programmes for the protection of children, particularly girls, abandoned children, street children, economically and sexually exploited children, refugee and displaced children and children in detention. 13/

In July 1994 a report "Children's Rights in Latvia" was prepared. 14/ The report indicates that, like all other countries, Latvia faces particular challenges in protecting the rights of children who have been physically and sexually abused.

It is important to coordinate programmes and possible legislative action for the protection of children. This is an area in which the independent institution for the protection of human rights could play an essential role. 15/ In short, Latvia, along with other countries, has a special obligation to protect all children.

2. Religious organizations

Latvia is obligated to provide effective guarantees for freedom of religion and belief which are consistent with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (the Declaration) 16/ and other relevant international instruments. 17/

Article 4 of the Declaration stipulates that:

"1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

"2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or belief in this matter."

The text of this article clearly defines the obligations incumbent on all States to formulate and implement suitable policies and legislation to guarantee religious tolerance, protect freedom of conscience and eliminate religious discrimination. This policy must be reflected in "effective measures" that will be adopted in "all fields of civic, economic, political, social and cultural life".

In accordance with the European Convention of Human Rights and recommendations by the European Commission on article 9 of this Convention which states that everyone has the right to freedom of religion, the

Commission has concluded that article 9 requires the State to introduce mechanisms which would provide that an individual can abstain from the Church (religion).

In order to ensure elimination of religious discrimination, legislation on the right to freedom of religion needs to be clearly drafted, in compliance with the aforementioned international obligations of Latvia. Therefore, a new draft law "On religious organizations" is currently being discussed in the Saeima, which would replace the present law "On religious organizations", adopted in 1990 by the Supreme Council. The new law was drafted, as stated in its preamble, according to the priority of humanitarian values, the Universal Declaration of Human Rights and other international human rights documents.

The draft law provides for freedom of conscience regarding the activities of religious organizations in Latvia, so that every person has the right, on the basis of freedom of conscience, belief and religion, to choose his/her religious affiliation or atheism. In the process of drafting the new law, the flaws of the present law, particularly from the human rights aspect, were considered: the term "untraditional religious organizations" was eliminated and religious organizations were not classified according to the world religious denominations, religious ceremonies and dogmatic stands. The draft law has also improved the procedure of registration. It is the same for all newly founded religious organizations which are expected to register again with the authorities during the first three years following the registration of their statutes.

The national policy on this issue should reflect clearly stated principles that guarantee the rights of every individual.

3. Non-citizens

The adoption of the Law on Citizenship of the Republic of Latvia has been a highly controversial issue in Latvia.

In November 1993, the Saeima accepted one of the five presented drafts as the basis for the law on citizenship. This document, as well as other drafts on the citizenship law, was examined by the Council of Europe, the OSCE High Commissioner on National Minorities and the OSCE Mission to Latvia. 18/

On 22 July 1994 the Saeima adopted and on 1 August the President announced the Law on Citizenship of the Republic of Latvia, which incorporated many of the recommendations by international organizations and experts. The law was recognized as acceptable by the international community. Following the adoption of the Law on Citizenship, regulations for naturalization were drafted with the assistance of experts from the Council of Europe and were approved by the Government. The test on the Latvian language, history and Constitution for naturalization is being prepared. The Government has to guarantee the fairness, legitimacy and accessibility of the naturalization process to all candidates for citizenship of the Republic of Latvia.

In order to allay fears and uncertainties, it is important that legislation be introduced, as soon as possible, to regulate the status

of non-citizens. 19/ To eliminate uncertainty and misinformation, the Government needs to carry out a widespread information campaign about the status and rights of non-citizens.

Therefore, an intensive training programme needs to be introduced for the staff of the Naturalization Board and the Department of Citizenship and Immigration, first, to ensure compliance with existing international standards to which Latvia is bound and second, to restore the confidence of the general public in the Department and the professionalism and impartiality of its staff.

It is important that there should be a simple complaints procedure to ensure that individuals can complain about any arbitrary or improper behaviour of officials who exceed or abuse their powers and have their complaints dealt with as promptly as possible.

4. Prisoners

It is now well established that imprisoned individuals should be treated humanely and in conformity with relevant international standards. These include United Nations conventions, the European Convention on Human Rights (and associated case law) and the OSCE commitments. These standards provide the minimum requirements for the management of institutions and treatment of prisoners. 20/

Although steps have been taken to change the attitude which existed in and towards Soviet prisons, it is clear that a sustained programme of prison reform is required in order for Latvia to meet these obligations. This will entail, among other measures, providing prisoners with humane living conditions. Such a programme will be expensive and will obviously have to be introduced progressively according to the possibilities of the State budget. In executing it, care should be taken to ensure that juveniles, those on remand and those serving sentences are accommodated in separate facilities. Juveniles should have no contact whatsoever with adult prisoners.

In addition, prison personnel must be properly trained and subject to disciplinary measures when necessary. This will not only assist in ensuring that prisoners are properly treated, it will also improve the image of the prison service. Prison personnel have an essential role to play in providing an atmosphere in which prisoners can try to rehabilitate themselves.

A rehabilitation programme is needed to enable individuals to reintegrate into the community. Existing evidence suggests that a number of individuals repeat offences in order to return to prison, because they have nowhere else to live and no job. A system of sheltered accommodation should be progressively established to enable former prisoners to gradually readjust to life outside prison.

It is important that an education programme for prisoners is implemented in Latvia. This will not simply help to occupy their time. It may enable them to emerge into the community at the end of their term with better skills.

The training should be done by paid professionals - but can also be provided by volunteers. 21/ It is particularly important that juveniles have a regular education programme.

In order to improve the standards in the prison system, Prison Department officials should continue to foster contacts and cooperate with their European counterparts and international organizations. They should also be willing to build constructive contacts with NGOs that are willing to assist in prisoner education and rehabilitation. 22/

5. Refugees

Latvia has limited resources and is confronted with substantial challenges in restructuring its political, economic, legal and social institutions. Hence, it understandably faces considerable difficulties in dealing appropriately with refugees.

This is one of the reasons why Latvia has not acceded to the 1951 Convention relating to the Status of Refugees and subsequent Protocol. However, as noted above, Latvia has accepted the obligations embodied in the Universal Declaration of Human Rights. Article 14 of the Universal Declaration stipulates that everyone has the right to seek and enjoy asylum from persecution in other countries. 23/

Latvia's present difficulties are compounded by its geographical location, making it a regular transit route for refugees from Western Asia and the Middle East to the wealthier, democratic Scandinavian countries, Germany and the Netherlands. It is for this reason that the Immigration Police was formed within the Ministry of Interior. However, there is a lack of legislation which would determine action towards those persons who are located in the territory of Latvia without identity documents or with forged documents. There are insufficient inter-State agreements with neighbouring countries to deport such persons or to send them back to the countries from which they arrived in Latvia. On this issue, a common policy for the three Baltic countries is desirable.

6. People with physical, intellectual or psychological disabilities

It is only in relatively recent times that the international community has turned its attention to framing particular instruments to ensure that the rights of such groups are observed in practice. These instruments include the Principles for the Protection of Persons with Mental Illness 24/ and the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities.

The Government of Latvia has demonstrated its intent to respect these human rights by its support for the earlier and more general Declaration on the Rights of Disabled Persons. 25/ From a human rights perspective, however, people with disabilities are frequently discriminated against because they lack the resources and physical or mental capability to access remedies which are available to others.

The protection of the basic rights of those with disabilities should be one of the main tasks for the independent institution for the protection and promotion of human rights which would have, as one of its responsibilities, the obligation to advocate on behalf of such persons. 26/

IV. THE EXISTING NATIONAL FRAMEWORK

1. The Saeima (Parliament) and Government

Within the Saeima there is a Standing Human Rights Committee which is responsible for reviewing draft legislation pertaining to human rights. The post of State Minister for Human Rights was established in April 1994 under the auspices of the Ministry of Justice. The chief responsibilities of the State Minister are to promote the understanding of human rights in the general public and to create a mechanism which would guarantee that State structures respect human rights. Although the State Minister and the Standing Committee are capable of influencing parliamentarians and government representatives in the area of human rights, initiatives of these offices are limited by a lack of finances. A serious problem in the Saeima and Government is the lack of specialists who could provide authoritative advice on the interpretation and application of international law and human rights in the context of domestic legislation.

For this reason it is of great importance that members of Parliament and specialists in the Government have access to authoritative advice regarding the requirements of Latvia's human rights obligations when considering proposed legislation or decisions and the adherence of national legislation in this field. Information and texts of international conventions and treaties must be made available to members of Parliament and Government representatives.

2. Public administration

State and local government are institutions which come into contact with issues pertaining to human rights on a daily basis. In a country governed by the rule of law, any action taken by the administration must be in conformity with national and international human rights norms. In effect, this means that a civil servant must ensure that his/her actions are in conformity with human rights norms, in particular, Latvia's Constitutional Law on the Rights of Persons and Citizens passed on 10 December 1991 which is the cornerstone of Latvia's national human rights norms.

In reality, the State rarely reviews the compliance of its own actions with international norms, the aforementioned Constitutional law or other norms. One cannot conclude that the State knowingly or systematically violates these rights, but it can be stated that violations do occasionally take place within the State administration. The percentage of violations would be decreased if each action by the State was taken with a sense of responsibility and knowledge of human rights norms. Unfortunately, most violations remain undetected and uncorrected.

Due to the fact that the law of 10 December 1991 was passed by a simple majority, it does not have constitutional status. For this reason the

Constitution should be amended to include the norms of the Constitutional Law on the Rights of Persons and Citizens so as to broaden the Constitution and to give these rights constitutional status.

It is important to define the responsibilities of civil servants serving the general public and at the same time to increase the legal quality, objectivity and transparency of their work. This has been foreseen in the draft law on Administrative process. This law will regulate the procedure for the issuance of Administrative decisions, especially Administrative Acts i.e., individual acts or decisions concerning a particular person. The relevant institution will have to observe certain abstract criteria in its decision-making on the issuance of an administrative act and its contents (necessity, purpose, etc.) as well as formalized procedure for investigation into errors and repeal of acts.

It is the responsibility of the State to guarantee each individual and organization the opportunity to gain information regarding the work of the State administration. Transparency in the decision-making process is an important part of the realization of the rights of the individual. This issue carries a great deal of relevance, since in State institutions a tendency towards secrecy and over-protection of information can often be observed, thus preventing individuals from actively exercising the protection of their interests. It is necessary to establish a simple mechanism of information accessibility for the public about themselves as well as general issues concerning State administration, while maintaining confidentiality when private or commercial interests of a third party are concerned.

3. The courts 27/

The Constitution and the 15 December 1991 Law on the Powers of Courts determine the independence of the court system. This provides for the principle of division of power. An independent court administration is essential for the control of public administration actions, particularly with regard to respect for human rights. The draft law on the Constitutional Court, presented by the Government to the Saeima, envisages that control of actions by the legislative power - the Saeima - be ensured by the Constitutional Court.

A significant step forward are the amendments to the Civil Code, which allow each person to appeal any administrative act regulating his/her actions through the courts. This is the most effective way of institutionalizing the control for the protection of human rights. In practice, this opportunity is rarely utilized, as a result of a general lack of information about this particular public administration control mechanism, as well as mistrust towards the court system during the 50 years of Soviet occupation. Therefore, it is the responsibility of the State to introduce this court procedure to the people and explain its role in the protection of human right. For this purpose, the already existing resources - for example, the programme "Communication with the Citizen" - can be used, as well as the potential resources of the to-be-established independent institution for the protection and promotion of human rights.

4. Professional requirements for civil servants and jurists

Those working in the State administration must perform their duties correctly and adequately. This applies also to those jurists employed in the court system (attorneys, judges, prosecutors). The re-established democracy of Latvia needs dynamic and skilled civil servants and lawyers, in order to ensure a successful transition to the rule of law.

Society should recognize that the profession of civil servant requires basic legal knowledge. Therefore the continuation of civil service reform is essential. It is important to recognize that not only the present State and local Government employees should be trained, but a complete two- to three-year training programme for the new civil servants has to be designed in advance. The State Administration School, founded in December 1993, could in the future become a secondary or even higher specialized educational establishment which would provide training for the new civil servants of Latvia. The new training programme should be carefully developed in order to avoid including Soviet ideas about the state, administration and society.

Society should recognize that the professions of civil servant and jurist in a State governed by the rule of law substantially differ from those in the Soviet system. In a State governed by the rule of law, the most essential part in the education of civil servants and jurists is the acquisition of methodology, the interpretation of legislative norms and how to apply them appropriately. The task of a civil servant and a jurist is, with the assistance of this methodology, to find a legitimate and fair resolution in each specific case. A fair resolution of a particular case is greatly determined by the particular interpretation of human rights norms, which the civil servant and the jurist must be familiar with. This is how practice by an official in a country governed by the rule of law is directly influenced by international and national human rights norms. In Soviet legislation this methodology was not applied in practice.

Presently there is a great lack of specialists in Latvia who could apply both international and national human rights norms according to the principles of a State governed by the rule of law. Until now most civil servants and jurists do not have an understanding or the ability to explain the international obligations of Latvia's national legislation. Ignorance and resistance within the bureaucracy in regard to international and national human rights norms are closely linked to the lack of appropriate education. Thus, one of the most important issues in the protection of human rights in Latvia is education for civil servants and jurists. Although Latvia's legislation to a great extent already complies with European standards, it is not sufficient for ensuring the respect for human rights in the daily work of administrative offices.

Latvian institutions providing training for civil servants and jurists should be acquainted with the methodology of interpretation and implementation of legislative norms in other democratic countries. The State Administration School has the advantage of developing new programmes while the University of Latvia Law Faculty is in need of reform to accommodate changes in methodology.

Meanwhile, the State should develop specific education programmes such as short intensive courses for civil servants, full-time study courses for persons entering the civil service and specialized intensive programmes for jurists, including judges, prosecutors and attorneys. Provision and translation of appropriate literature is of great importance.

There is an urgent need to establish a well-resourced information centre within the independent human rights institution (when established), to collect and disseminate information on human rights and relevant international treaties and domestic legislation, as well as textbooks on domestic and international law. Copies of relevant judicial decisions and judgements should also be made available. 28/ This information centre should quickly establish links with other institutions which have databases on human rights materials (particularly the United Nations Centre for Human Rights in Geneva, the Council of Europe and the OSCE). 29/ Bearing in mind the parliamentary process (in terms of adequate preparation of legislative texts), this information centre should provide consultations to the Saeima and the Government as to Latvia's international treaty obligations and the appropriate standards required by the Council of Europe and the OSCE. Therefore, lawyers appointed to provide this service will need immediate training.

5. The Prosecutor's Office and the police

In relation to the criminal process, 30/ there is a need for reform within the structures of the Prosecutors Office in accordance with the principles of human rights, democracy and the rule of law. Training and assistance is needed in areas ranging from crime prevention to compliance with the criminal process norms. 31/

The police, in their day-to-day activities, must be able to appropriately balance their public assistance and law enforcement responsibilities. Latvian police need to be properly trained in a variety of legal areas. It needs to be recognized that the rights of the police are a specific area of rights which need to be thoroughly learned by the police themselves - for example, the permissible limits on the use of force (including firearms) prescribed by human rights norms as well as the very limited circumstances in which interference with correspondence or telephone tapping is allowed, etc. It should be taken into consideration that the police officer has to decide on action to be taken in a very short period of time and to comply with human rights standards. This is an essential precondition for Latvia to acquire a professional police force in which the public has confidence. 32/

6. Non-governmental organizations

In Latvia there is an increasing number of groups and individuals dedicated to the promotion and protection of human rights. Their continued growth and development will be of great importance in creating a society in which respect for the rights of the individual becomes widely accepted.

The World Conference on Human Rights in Vienna in 1993 not only emphasized the increasingly important role that non-governmental

organizations (NGOs) play in the protection of human rights, but also emphasized the responsibility of the governments to regularly consult with NGOs and take appropriate notice of their views. 33/

Apart from the traditional role which NGOs have played in stimulating debate on human rights issues and in focusing public attention on abuses of human rights, there is a growing acceptance by Governments that NGOs have an important role to play in "standard-setting". This is true not only at a national level but also at the international level in the development of new international treaties, conventions and declarations.

It is therefore essential that the Government, and in particular government officials, are prepared to consult regularly with NGOs and, more importantly, to recognize that their views and methods will frequently differ from those of Government. In many cases NGOs will be able to indicate the source of problems and provide evidence of human rights abuses of which ministers and their officials may be unaware.

As is the case in many other countries, the principal focus of public debate on human rights in Latvia is restricted to the most important issues for the country, for example, the rights of national minorities and non-citizens. The rights of many of the most vulnerable and disadvantaged groups in the community can frequently be disregarded, or even forgotten, without the advocacy and concern which relevant NGOs bring to the public arena.

It is very important that the NGOs take an active part in:

- stimulating and informing the public debate on human rights issues;

- assisting the Government in setting and observing appropriate standards for protecting human rights;

- focusing attention on the needs of particularly vulnerable and disadvantaged groups (including children, the intellectually disadvantaged, the mentally ill, those with physical disabilities and the elderly);

- assuming the role of observer of the Government and the Saeima in the process of adopting legislation.

Specific areas requiring cooperation and assistance include:

- Establishment of a regular mechanism (round table or forum) for NGOs active in the human rights and other fields to meet. Appropriate government representatives should attend those forums so that the Government would be able to consult regularly with the NGOs. A series of round table discussions could be established on specific issues (e.g. children's rights);

- Improvement of national legislation in the non-profit sector; 34/

- It is important that NGOs have access to translations of international human rights conventions and treaties in Latvian and other languages;

- Organization of human rights NGO public forums, at which NGOs can inform the general public and the media information about their activities.

It is essential that government policy both acknowledges the important role which NGOs play in the promotion and protection of human rights and also ensures that government officials are provided with clear policy directives to regularly consult with NGOs and to respect them.

V. THE MEDIA

A genuine pluralistic democracy, respecting human rights and based on the rule of law, must have a free and independent media. In addition to the relevant human rights treaties there are other international standards 35/ against which practice and regulations can be tested to ensure they actually comply with the appropriate standards.

With respect to the training needs of the media professionals, a number of initiatives and cooperation programmes are being implemented by international and private organizations with expertise in this area. 36/

VI. THE INTERNATIONAL FRAMEWORK

Latvia regained its independence in 1991 after 50 years of Soviet rule. The first free and fair elections were conducted in June 1993. The Constitution of Latvia of 1922 has been reinstated. Human rights and fundamental freedoms are guaranteed by the Constitutional Law of 10 December 1991 "On the Rights and Obligations of a Citizen and a Person". Although the basic laws contain a special reference to conflicts when national legislative norms do not comply with international legal obligations about the priority of the latter, this relationship has not been determined at a constitutional level in a case of collision between the Constitution and international obligations.

Obligations with respect to the United Nations (UN)

By the Declaration of 4 May 1990, "On the Accession of the Republic of Latvia to International Instruments relating to Human Rights" the Supreme Council of the Republic of Latvia proclaimed Latvia's accession to 52 international human rights instruments. 37/ Latvia is therefore a party to the principal international human rights treaties, 38/ including the International Covenant on Civil and Political Rights.

Organization on Security and Cooperation in Europe (OSCE)

Latvia is a member of the OSCE. 39/ All participating States of the OSCE are committed to the protection and promotion of human rights and fundamental freedoms, the strengthening of democratic institutions and the rule of law as the essential basis for peace and security in Europe.

The Council of Europe

The accession of Latvia to the Council of Europe took place at the beginning of 1995. As a member State, Latvia will be required to sign the European Convention on Human Rights, with the intention of ratifying it within a reasonably short time. The Council of Europe has produced two key human rights instruments: The European Convention on Human Rights and the European Social Charter. These stipulate rights which must be guaranteed to individuals within the jurisdiction of member States, accompanied by collective supervision and guaranteed procedures at the European level.

Upon becoming a member State of the Council of Europe and acceding to the aforementioned conventions, Latvia will have to make the additional political commitment to fully accept the Convention's control mechanism (i.e. the right of individual complaint (art. 25) and the Court's compulsory jurisdiction - art. 46). 40/

This commitment to ratify the European Convention on Human Rights and its Protocols and to fully accept its control mechanism necessitates a thorough study of a State's legislation and practice with the legal requirements prescribed by these documents - as interpreted by the European Commission and the Court of Human Rights. Thus, of major significance is the need to establish an institution at the governmental level to study Latvia's laws and practices to ensure that they are compatible with the Convention and the relevant Protocols and case-law. 41/

VII. CONCLUSIONS: THE NEED FOR A HUMAN RIGHTS COUNCIL OF LATVIA

While many legal and institutional reforms have been initiated in Latvia's transition to a fully democratic society based on the rule of law, it will be some time before these reforms and administrative procedures have been developed to the extent required to guarantee adequate protection of human rights. It is clear, given the specific circumstances of Latvia's transition that the centrepiece of any Latvian Programme for the Protection and Promotion of Human Rights must be a national independent institution unique to Latvia.

The need for a Human Rights Council of Latvia

It is necessary to create an independent institution with adequate powers to effectively ensure the promotion and protection of human rights in Latvia. There are several reasons for this, beyond those already set out:

First, effectively safeguarding and promoting human rights requires the establishment of a permanent institution expressly for that purpose, with professional expertise and the credibility which goes with it.

Second, while NGOs play an extremely important role in identifying and monitoring human rights abuses, they do not have the legal powers which are often necessary to provide effective redress.

Third, Latvia currently lacks an effective mechanism to provide redress for human rights abuses by way of conciliation. It is now well established that one of the functions which an independent human rights council can perform is to provide this service. 42/

Fourth, it is now accepted by the international community that human rights are both universal and indivisible. However, as has been recognized in both the international treaties on human rights and, more recently, by the World Conference on Human Rights in 1993, the primary responsibility for effective protection of human rights must rest with each country. International monitoring mechanisms are important, but they are beyond the reach of many of the most vulnerable and disadvantaged individuals. Furthermore, they cannot operate effectively without appropriate mechanisms at the national level to address and redress the majority of human rights abuses.

Fifth, while the institution of an Ombudsman is an important element in the framework for protecting human rights in a number of countries, most Ombudsmen have a mandate primarily directed towards protecting the rights of individuals affected by the arbitrary acts of public officials. They generally act as advisers in response to complaints lodged with them, and their decisions are of an advisory/consultative, not binding, character. 43/ The Ombudsman institution has a long history and traditions in Scandinavian countries and elsewhere in Western Europe, where it enjoys the respect of the Government, parliament and public. The recommendations and proposals made by Ombudsmen in these countries are respected and considered to be binding. However, there are no such traditions in Latvia. An institution which only has powers to give recommendations and suggestions will not be presently respected and Latvia does not have the time to wait for decades for the development of such respect.

Furthermore, many individuals who are most in need of effective mechanisms to protect them from abuses of human rights have neither the knowledge nor, in some cases, sufficient mobility or social skills to lodge an oral or written complaint. Yet such people (children, the intellectually disadvantaged, the mentally ill, those with severe physical disabilities) form a significant percentage of Latvia's population. They need a proactive, independent human rights institution to effectively assist them.

The current situation in Latvia indicates that a very high priority should be given to appropriate human rights education programmes. These are clearly necessary not only for members of the general public, but also for government officials, police, other law enforcement authorities, the military, members of the legal profession and others.

However, to most effectively assess the priority to be accorded to public education and promotional activities, those responsible for their preparation should be located in the same organization as those handling complaints of human rights abuses. It will also ensure that educational and promotional materials are constantly reassessed against the areas where most problems are apparent.

After careful consideration and analyses of Latvia's existing institutional structures, the Government of Latvia has decided to immediately establish 44/ a Human Rights Council of Latvia with the following terms of reference:

1. Terms of reference of the Human Rights Council of Latvia 45/

* To promote understanding, acceptance and the public discussion of human rights in Latvia;

* To undertake research, educational and other programmes for the purpose of promoting human rights and to coordinate any such programmes undertaken by any other persons or authorities on behalf of the Government of Latvia;

* On its own initiative, or when requested by the Prime Minister or the Saeima, to report to the Prime Minister and the Saeima as to action which in the opinion of the Council needs to be taken by Latvia in order to comply with the provisions of relevant international treaties relating to human rights;

* On its own initiative, or when requested by the Prime Minister or the Saeima, to report to the Prime Minister and the Saeima as to the laws that should be enacted by the Saeima, or actions which should be taken by the Government to protect human rights;

* To undertake comparative analyses of the existing laws and proposed laws for the purpose of ascertaining whether they are inconsistent with or contrary to any of Latvia's human rights treaty obligations and to report to the Prime Minister and the Saeima the results of any such examination;

* To inquire into any individual complaint, act or practice related to the abuse of human rights, and wherever the Council considers it appropriate to do so, to endeavour by conciliation to effect a settlement of the matters that gave rise to the complaint, or to report to the Prime Minister and the Saeima on action necessary to correct the offending act or practice;

* To refer any individual complaint to another institution, be it a court, tribunal or similar body, if such a body could deal more appropriately with the complaint;

* To conduct general inquiries, if necessary, into the needs of particularly vulnerable groups which are unable to protect their rights, such as children, the mentally ill and those with physical disabilities;

* To establish Advisory Committees, including members of non-governmental organizations, to assist the Council in its educational and promotional programmes;

* To do anything relevant to achieving these objectives, including sharing experience with other institutions which have similar responsibilities.

2. Powers of the Human Rights Council of Latvia

* To conduct inquiries and collect necessary information;

* To call for and examine witnesses if necessary;

* To obtain information and documents and to compel the production of such information and documents if necessary;

* To prohibit the disclosure of the identity of people giving evidence to the Council if this is necessary to protect the rights of individuals;

* To ensure that people who are imprisoned or detained can submit information to the Council in confidence;

* To impose penalties for failure to comply with an order of the Council, providing false or misleading information, or obstructing a member or staff of the Council in his/her conduct of an investigation. 46/

The historical circumstances affecting Latvia dictate that public education will be most important in promoting the respect of human rights. Consequently, one of the first priorities of the Human Rights Council of Latvia will be the development of a National Programme of Human Rights Education, Information and Training containing the following priority elements:

3. Priority elements for a national programme of human rights education, information and training in Latvia

* Disseminate this programme to interested NGOs, members of Saeima, government and parliamentary officials, the media and the general public as a consolidated source of material on specific international human rights treaties and conventions to which Latvia is a party;

* Ensure that the new Law on Education is fully consistent with Latvia's international obligations;

* Develop a series of public information brochures in both Latvian and Russian which explain in simple, "non-legal" language key human rights issues (such as the right of individuals to challenge unjust administrative decisions), obtainable through the postal service system, social service offices, workplaces and other places of public access;

* Develop a series of short (5-10 minutes) television and radio public service advertisements to increase public understanding and awareness of both general and specific human rights issues. Specific issues which should be given priority include: protection of the rights of children and respect for the rights of people with disabilities;

* Deliver a series of seminars on human rights issues for key policy makers - to stimulate their thinking and through their leadership to encourage greater awareness of human rights issues in official and unofficial circles;

- Provide assistance in curriculum development and publishing support so that human rights courses can be also offered to grades other than Grade 9;

- Provide training for teachers in areas such as social rehabilitation and prisons (as well as in the delivery of public school curricula on human rights and democracy);

- Develop intensive training programmes for judges, prosecutors and lawyers;

- Introduce courses on international human rights law to study programmes offered at the Law Faculty and the Department of Political Science at the University of Latvia;

- Provide courses in drafting legislation for the relevant government officials;

- Introduce an intensive one-week course "Protection of Human Rights in Public Administration Structures" to the curriculum in the Public Administration School;

- Provide specialized international human rights training for key senior civil servants - particularly those in the Ministries of Foreign Affairs, Justice, Interior and Social Welfare;

- Establish as an integral part of the Human Rights Council an Information and Documentation Centre, accessible to NGOs as well as government and parliamentary officials. Such a centre should have access to a computerized system and electronic link-up capability with various human rights databases and with other national, regional and international organizations.

Conceptually approved by the Cabinet of Ministers on 24 January 1995.

Notes

1/ Vienna Declaration and Programme of Action, part II, para. 78.

2/ Ibid., para. 79.

3/ As outlined in "Education Reform in Latvia", published in May 1994 by the Ministry of Education, Culture and Science.

4/ It is envisaged that a new Law on Education will be in force by the beginning of the 1995/96 academic year.

5/ A course on democracy is presently offered as an elective for grade 9 students.

6/ A number of valuable tools for the teaching of human rights are immediately available from several international bilateral and non-governmental organizations. An example is the booklet "Teaching Human Rights - Practical Activities for Primary and Secondary Schools" (1989) published by the United Nations Centre for Human Rights. This booklet provides basic information for teachers in primary and secondary schools who want to foster awareness and knowledge of human rights. The Council of Europe also provides assistance to teachers of primary, secondary and vocational schools to attend the International Training Session on Human Rights and Peace Teaching organized by the Geneva-based International Training Centre on Human Rights and Peace Training. The Netherlands Helsinki Committee also has a special human rights education programme in the Baltic States.

7/ Publicly funded teacher-training institutes include Liepaja Pedagogical College, Riga Teacher Training College, Imanta Teacher Training Institute and Rezekne Teacher Training Institute. (Further information on the educational system in Latvia is contained in the booklet "Education in the Republic of Latvia" published in 1993 by the Ministry of Education.)

8/ The latter was adopted by the General Assembly in December 1993.

9/ Basic human rights material is available through the United Nations Centre for Human Rights and the Council of Europe. With regard to the latter, the Council of Europe's "Human Rights Album" presents articles from the European Convention on Human Rights in easily understandable form with illustrations which make it accessible to children. The United Nations produces a wealth of informational material such as "Human Rights: A Compilation of International Instruments" as well as a number of booklets/fact sheets covering areas such as "Human Rights Machinery" and "The International Bill of Rights".

10/ For example, the news-letters published by the Latvian Centre for Human Rights and Ethnic Studies.

11/ Latvia acceded to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights on 4 May 1990.

12/ Latvia acceded to both the 1924 Declaration of Geneva and the 1959 United Nations Declaration on the Rights of the Child on 4 May 1990.

13/ Vienna Declaration and Programme of Action, part I, para. 21.

14/ The author, Ilze Arkliņa, was commissioned by the UNDP to prepare this report.

15/ This is precisely the role performed by the Australian Human Rights and Equal Opportunity Commission, which has responsibility for monitoring the protection of children's rights and has produced substantial reforms through the reports it has prepared on homeless children, children with disabilities, abused children, etc.

16/ All three documents were included among the international human rights instruments to which Latvia acceded on 4 May 1990.

17/ See the Document of the Copenhagen meeting of the Conference on the Human Dimension of the OSCE.

18/ The Government of Latvia gave the OSCE permission, in November 1993, to establish a residential mission in Latvia "to address citizenship issues and related matters" and to report on "developments relevant in the full realization of OSCE principles, norms and commitments".

19/ Presently a draft law on "The status of the citizens of the former USSR who are not citizens of Latvia or any other country" is being prepared for the third reading in Saeima.

20/ See also, in this connection, part II, para. 69 of the Vienna Declaration and Programme of Action.

21/ As is being done in the Ilguciems prison in Riga.

22/ For additional information see "Study on prison reform in Latvia" prepared by Līga Krapāne on behalf of UNDP.

23/ The Refugee Convention requires that refugees should not be expelled or returned to the country which has persecuted them; that is, they should either be granted asylum in the country in which they are located or sent to any third State which is prepared to grant them asylum.

24/ The full title of this instrument is "Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care". These principles are adopted by the General Assembly of the United Nations in December 1991.

25/ Declaration of the Latvian Supreme Council of 4 May 1990.

26/ See, for example, the 1993 report by the Australian Human Rights and Equal Opportunity Commission on the Rights of the Mentally Ill. Mental illness, in one form or another, will affect 20 per cent of the inhabitants of Latvia during their lifetime. (This figure is approximately the same for every country.) However, most of the discrimination and abuses of rights of the mentally ill are based on widespread public ignorance. The National Programme for Protection and Promotion of Human Rights can address this ignorance through effective public education programmes.

27/ See article by G. Zemribo: "The Judicial Power of the Courts in Latvia" in *On the Way Towards Democracy in Humanities and Social Sciences*, published by the University of Latvia in 1994 1 (2), pp. 29-37; D. Dobraja: "The Establishment of an Administrative Court and Judicial Reform in Latvia", an unpublished survey.

28/ In the long-term, the aim should be for courts in their decisions to refer to the legally non-binding arguments of other decisions, commentaries and teaching aids. The prohibition of quoting in the Soviet jurisprudence does not enhance the legal and intellectual quality of the decisions. Confrontation with arguments mentioned elsewhere as the basis for the decision in the legal system of continental Europe must not be confused with the legally binding precedent rights in the Anglo-Saxon system.

29/ There is a lack of information and legal literature in Latvia on the case law of the European Court and Commission of Human Rights and decisions of the United Nations Human Rights Committee.

30/ For example, principles of discretionary prosecution, procedures respecting the quality of the parties, alternatives to imprisonment and other principles in accordance with the European Court's case law.

31/ See the Law on Prosecutor's Supervisory Functions of 19 May 1994.

32/ More specific recommendations are set out in the section on Education, Training and Information.

33/ Vienna Declaration and Programme of Action, part I. para. 38.

34/ Latvia should move towards a system in which registration is a purely administrative process (rather than prescribing criteria for legitimacy).

35/ Such as the European Convention on Transfrontier Television, 1989.

36/ These include the European Broadcasting Union, the International Federation of Newspaper Publishers, the International Federation of Journalists as well as several bilateral assistance programmes in the organization of seminars, workshops, consultancies and other forms of assistance.

37/ A number of these instruments are not actually treaties, but rather declarations or other documents adopted by the General Assembly or other organs of the United Nations.

38/ Latvia's initial report to the Human Rights Committee, which monitors States' compliance with the International Covenant on Civil and Political Rights, is overdue. Relevant departments are experiencing difficulties in preparing it. Appropriate support from the Geneva-based United Nations Centre for Human Rights may be necessary.

39/ The OSCE comprises the pan-European Group of States together with the non-European NATO countries of Canada and the United States. Latvia joined the OSCE at the Moscow Meeting of the Conference on Human Dimension, September 1991.

40/ Lithuania and Estonia are expected to do so shortly.

41/ The Lithuanian Working Group, set up by Presidential Decree in 1994, for the Preparation of the Ratification of the European Convention on Human Rights, has already begun its work.

42/ See, for example, the Annual Reports from 1987-1994 of the Australian Human Rights and Equal Opportunity Commission.

43/ Note: There are many different types of Ombudsmen, but this is the model which applies in most countries.

44/ The World Conference on Human Rights in 1993 called for Governments to take immediate action to establish national institutions where necessary (see, for example, the Vienna Declaration and the Programme of Action, part II, para. 23).

45/ There is very little international literature on the desirable mandate and powers for an Independent National Human Rights Commission or similar institutions. One document which may assist the Government of Latvia in its consideration of this proposal is "Composition, Definition, Jurisdiction and Powers of National Human Rights Institutions" by B. Burdekin, 1991.

46/ To ensure the implementation of the powers of the Human Rights Council of Latvia regarding imposition of penalties for failure to comply with an order of the Council, providing false or misleading information, or obstructing a member or staff of the Council in their conduct of an investigation, it is necessary to amend relevant acts of legislation.